

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kaitlin Campbell	Team: Squad #13	CCRB Case #: 201608616	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Wednesday, 10/12/2016 5:55 PM	Location of Incident: Stuyvesant Avenue between Halsey and McDonough Street	Precinct: 81	18 Mo. SOL 4/12/2018	EO SOL 4/12/2018	
Date/Time CV Reported Wed, 10/12/2016 6:19 PM	CV Reported At: CCRB	How CV Reported: Call Processing System	Date/Time Received at CCRB Wed, 10/12/2016 6:19 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. SSA EreK Powers	05297	944907	081 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Ross Garner	21542	949007	081 PCT
2. POM George Kurian	10678	948065	081 PCT

Officer(s)	Allegation	Investigator Recommendation
A.SSA EreK Powers	Discourtesy: Sergeant EreK Powers spoke discourteously to § 87(2)(b)	
B.SSA EreK Powers	Abuse: Sergeant EreK Powers threatened § 87(2)(b) with the use of force.	
C.SSA EreK Powers	Off. Language: Police Officer EreK Powers made remarks to § 87(2)(b) based upon race.	
D.SSA EreK Powers	Force: Sergeant EreK Powers used physical force against § 87(2)(b)	

Case Summary

On October 12, 2016 § 87(2)(b) called the CCRB and filed this complaint on behalf of § 87(2)(b) (Board Review 01). § 87(2)(b) was contacted on October 17, 2016 and October 19, 2016 and then declined giving a statement on the advice of counsel. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

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On October 12, 2016, at approximately 4:25 p.m., § 87(2)(b) was driving south on Stuyvesant Avenue, a one-way street, in the right lane. He saw three police officers in plainclothes standing around a car stopped in the left lane and as § 87(2)(b) drove past the officer, he slowed to a near stop and said out of his open driver's window, "Got 'em" as if giving the officers a thumbs up. Sergeant Erik Powers of the 81st Precinct said to § 87(2)(b) "Get the fuck out of here before I slap the shit out of you" (**Allegation A: Discourtesy, § 87(2)(g)** (**Allegation B: Abuse of Authority, § 87(2)(g)** § 87(2)(b) drove away. Sgt. Powers, along with Police Officers George Kurian and Ross Garner, got in their car, followed § 87(2)(b) and pulled him over. Sgt. Powers approached § 87(2)(b)'s driver door and said, "You fucked with the right nigger today" (**Allegation C: Offensive Language, § 87(2)(g)** § 87(2)(b) Sgt. Powers opened the driver door and pulled § 87(2)(b) out of the car (**Allegation D: Force, § 87(2)(g)** § 87(2)(b)

Sgt. Powers handcuffed § 87(2)(b) and he was placed under arrest for obstructing vehicular traffic, obstructing governmental administration, and on suspicion of driving while intoxicated. The officers transported him to the 81st Precinct stationhouse and placed him in a holding cell. Shortly after, § 87(2)(b) was transported to the 78th Precinct stationhouse and had intoxicated driver tests conducted, including a breathalyzer test that yielded a 0.09 blood alcohol content. § 87(2)(b) was therefore charged with driving while intoxicated.

Findings and Recommendations

Allegation (A) Discourtesy: Sergeant Erik Powers spoke discourteously to § 87(2)(b)
Allegation (B) Abuse of Authority: Sergeant Erik Powers threatened § 87(2)(b) with the use of force.

According to § 87(2)(b)'s phone statement, he was walking south on Stuyvesant Avenue toward MacDonough Street when he saw an unmarked police car pull over a car in the left lane, several feet in front of him. § 87(2)(b) continued walking and saw Sgt. Powers, PO Kurian, and PO Garner get out of an unmarked car. PO Kurian and PO Garner walked to the driver's side, and Sgt. Powers walked to the passenger side and stood in the street. Almost immediately after PO Garner took the driver's information, § 87(2)(b) saw § 87(2)(b) driving a Honda Accord in the right lane, slow down and, as he passed the officers said, "You got 'em!" through his driver's window. Sgt. Powers said to § 87(2)(b) "Get going before I smack you." § 87(2)(b) stopped his car, asked Sgt. Powers what he just said and told him he was not "some punk-ass kid" but a "tax-paying citizen." Sgt. Powers and § 87(2)(b) argued for about 30 seconds and § 87(2)(b) drove away.

According to § 87(2)(b) he was driving south on Stuyvesant Avenue when he saw PO Garner, PO Kurian, and Sgt. Powers standing around a car. In his initial statement § 87(2)(b) said he was not sure whether they were officers or whether they were civilians who were friends with the driver of the car. As § 87(2)(b) passed the officers, he said, “Got ‘em” out of his driver’s window.

In his phone statement, § 87(2)(b) said he then continued driving behind the cars in front of him and stopped on the left side of the street at either a stoplight or stop sign. In his in-person statement he said he pulled forward behind the car in front of him and stopped.

Sgt. Powers walked up to § 87(2)(b)’s window and said, “What the fuck did you just say?” and, “Get the fuck out of here before I slap the shit out of you.” In his phone statement, § 87(2)(b) said he then asked Sgt. Powers what “all that” was about and that Sgt. Powers then told him to “get the fuck out” of there a second time.

The officers were consistent with the civilian statements of how the incident began. PO Garner said they had pulled over a car on Stuyvesant Avenue between Halsey Street and MacDonough Street because the car’s temporary paper license plate was falling off the back fender. All of the officers said Sgt. Powers stood on the passenger side of the car, standing in the street, and PO Garner and PO Kurian stood on the driver side of the car, standing near the sidewalk.

§ 87(2)(b) pulled up beside the officers within two minutes of their stopping the car. Sgt. Powers said § 87(2)(b) was screaming and cursing but could not remember what if anything § 87(2)(b) was saying. PO Kurian said § 87(2)(b) yelled something along the lines of “stop blocking traffic” or “let people go,” and PO Garner could not hear what § 87(2)(b) said, but he saw his mouth moving. According to Sgt. Powers and PO Garner, at least four cars had to stop behind § 87(2)(b) and some started honking.

Sgt. Powers said he told § 87(2)(b) he “had to go” five or six times and that § 87(2)(b) continued screaming and cursing but ultimately left. While he spoke with § 87(2)(b) Sgt. Powers said he smelled alcohol coming from § 87(2)(b)’s breath and that § 87(2)(b) had bloodshot eyes. PO Kurian said he heard Sgt. Powers tell § 87(2)(b) to “keep moving” about three to five times. PO Kurian thought § 87(2)(b) was drunk because of his decision to yell at police officers he had nothing to do with and because his eyes were bloodshot. PO Garner said he saw Sgt. Powers first turn toward § 87(2)(b) and made a forward sweeping motion with his hand and then turn toward § 87(2)(b) three consecutive times. PO Garner did not hear what Sgt. Powers said to § 87(2)(b) but said Sgt. Powers later told him he had repeated “move along.” PO Garner did not then think § 87(2)(b) was drunk.

All of the officers denied that Sgt. Powers told § 87(2)(b) to “get the fuck out” of there or that he threatened to smack or slap § 87(2)(b). Sgt. Powers and PO Garner both said they were not threatened by § 87(2)(b) but said that it was dangerous for § 87(2)(b) to distract Sgt. Powers from the car stop.

Patrol Guide Procedure 203-09 states that a member of service must be courteous and respectful when making contact with the public (Board Review 05).

§ 87(2)(b), § 87(2)(g)

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Patrol Guide Procedure 221-01 states that only in situations where it is not safe or appropriate to use de-escalation techniques to safely gain voluntary compliance from a subject, a member of service may use reasonable force to gain control of a subject, ensure the safety of a member of service, or otherwise protect life (Board Review 06).

§ 87(2)(b), § 87(2)(g)

Allegation (C) Offensive Language: Police Officer Erik Powers made remarks to § 87(2)(b) based upon race.

Allegation (D) Physical force: Sergeant Erik Powers used physical force against § 87(2)(b)

After § 87(2)(b) drove away, § 87(2)(b) saw PO Garner return the documents to the driver the officers originally pulled over, and then saw the three officers look at each other, get back into their car, turn on their police lights, and drive after § 87(2)(b) continued walking in that direction and saw the officers pull § 87(2)(b) over about a block away. As he kept walking toward them, § 87(2)(b) saw all three officers get out of their car and then saw § 87(2)(b) get out of his car, and saw them talking in the street.

When § 87(2)(b) arrived at the intersection of Stuyvesant Avenue and MacDonough Street, § 87(2)(b) was standing in the street arguing with Sgt. Powers about whether Sgt. Powers said he would smack him. As § 87(2)(b) and Sgt. Powers argued, about five marked police cars arrived on the scene and a crowd of about 20 bystanders gathered. Sgt. Powers then handcuffed § 87(2)(b) asked another uniformed officer why he was being arrested and was told he had stopped his car in the middle of the road, blocking traffic. Sgt. Powers placed § 87(2)(b) in the back of the unmarked car and drove away.

According to § 87(2)(b) after he drove away he saw the police lights in his rearview mirror about a block later and he pulled to the side of the street. Sgt. Powers then got out of his car, walked up to § 87(2)(b)'s driver window and said, "You fucked with the right nigger today," and opened the driver door. Sgt. Powers told § 87(2)(b) to get out of the car. In his phone statement, § 87(2)(b) said Sgt. Powers then pulled him out of the car by his left arm but in his in-person statement he said Sgt. Powers pulled him out of the car by the collar of his shirt.

§ 87(2)(b) said the officers did not ask him for identification, ask him whether he had any weapons or contraband, or tell him why he was being arrested. In his phone statement, he denied having any contraband in the car and said he had drunk one beer that day at 2:00 p.m. In the initial narrative of his in-person statement, § 87(2)(b) said he had not drunk any alcohol that day and found out he was being charged with driving while intoxicated when he appeared before a judge the next morning. Later in the statement, § 87(2)(b) said he saw one of the officers remove three plastic 50 ml. miniature alcohol bottles from his car as he was being handcuffed, but he maintained he had not been drinking that day.

§ 87(2)(b) said he was then brought to the 81st Precinct stationhouse, placed briefly in a holding cell there, and then transported to the 78th Precinct stationhouse, where a highway patrolman conducted an intoxicated driver test and he somehow blew a positive result. § 87(2)(b) said he thought the results were set up. In his phone statement he said this was because the breathalyzer test was taken six to eight hours after he was arrested on the street, and in his in-person statement, he said it was because the officers purposefully tampered with the test results.

All of the officers said it was Sgt. Powers's decision to pull § 87(2)(b) over because he suspected he was drunk. PO Garner added that § 87(2)(b) was also being pulled over because he had blocked traffic while speaking to Sgt. Powers. Sgt. Powers and PO Garner both said the original stop had concluded by the time § 87(2)(b) drove away but PO Kurian said the officers decided to leave the original stop unfinished after Sgt. Powers turned to him and PO Garner and said "I think he's drunk," referring to § 87(2)(b). All of the officers said they then got back in their car and pulled § 87(2)(b) over without incident about a block away.

In his initial narrative, Sgt. Powers said he approached § 87(2)(b)'s driver door and "pulled" him out of the car, which he later said meant that he "commanded" § 87(2)(b) out of the car. Sgt. Powers did not remember what he said to § 87(2)(b) to command him out of the car but knew that he did not say anything to § 87(2)(b) before this. PO Garner said Sgt. Powers walked up to § 87(2)(b)'s door and immediately told him to get out of the car. PO Kurian said PO Garner approached § 87(2)(b)'s window, asked him for his license and registration, and then asked him to step out of the car. All of the officers said § 87(2)(b) got out of the car voluntarily and all of the officers denied that Sgt. Powers physically pulled § 87(2)(b) out of the car. All of the officers denied that Sgt. Powers said, "You fucked with the right nigger today" or "get the fuck out of the car" as he walked up to § 87(2)(b).

All of the officers said they saw bottles of alcohol in § 87(2)(b)'s car and that § 87(2)(b) was arrested and ultimately brought to the 78th Precinct stationhouse, where he blew into a breathalyzer and tested positive for having blood alcohol content above the legal limit (Board Review 03). § 87(2)(b)'s car was driven back to the stationhouse and the bottles of alcohol were vouchered (Board Review 04). § 87(2)(b) was ultimately convicted of obstructing governmental administration and driving while intoxicated. Because of the arrest and charges of blocking vehicular traffic, a vehicle stop allegation was not pleaded.

Patrol Guide Procedure 203-10 states that a member of service shall not use discourteous or disrespectful remarks regarding a person's race (Board Review 07).

§ 87(2)(b), § 87(2)(g)

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Civilian and Officer CCRB Histories

- § 87(2)(b) [REDACTED]
[REDACTED]
- Sgt. Powers has been a member of service for 10 and has been a subject in 14 CCRB complaints and 30 allegations, of which three were substantiated.
 - Case #201407556 involved substantiated allegations of entry and search against Sgt. Powers. The Board recommended charges and the NYPD imposed no penalty.
 - Case #201606619 involved substantiated allegations of entry and search and other abuse of authority against Sgt. Powers. The Board recommended command discipline and the NYPD imposed command discipline.
- § 87(2)(g) [REDACTED]

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation because of the arrest.
- As of February 9, 2018, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (Board Review 08).
- According to the Office of Court Administration, § 87(2)(b) [REDACTED] has no history of convictions in New York City aside from the convictions related to this incident. He pled guilty and received a \$300 fine.

Squad No.: 13

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date